

**JUL 31 2003**Vieyra v. Barnhart, No. 02-55225

HALL, Circuit Judge, dissenting.

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

I respectfully dissent.

“An ALJ is not compelled under the treating physician rule to simply discard the contrary opinions of other examining physicians.” Edlund v. Massanari, 253 F.3d 1152, 1158 (9th Cir. 2001). Where, as here, the opinion of a claimant’s treating physician is controverted by other expert opinions, the ALJ may reject the treating physician’s opinion for specific and legitimate reasons that are supported by substantial evidence in the record. Id. at 1157. The opinion of a treating physician may be properly discredited under the “specific and legitimate reason” standard if (1) the claimant’s subjective complaints are properly discredited, and (2) the treating physician’s opinion was premised on the claimant’s subjective complaints. Fair v. Bowen, 885 F.2d 597, 605 (9th Cir. 1989); see also Edlund, 253 F.3d at 1158 (holding that a “lack of supporting clinical or laboratory findings” constitutes a specific and legitimate reason for discrediting a treating physician’s opinion). The ALJ’s analysis meets the two-part test set forth in Fair.

We give substantial deference to an ALJ’s credibility determination if it is supported by specific, non-arbitrary findings. Rollins v. Massanari, 261 F.3d 853, 856-57 (9th Cir. 2001). Here, several experts opined that Vieyra exhibited classic

signs of symptom magnification. The ALJ, moreover, had the opportunity to observe Vieyra at the hearing, and found that his appearance and demeanor were inconsistent with the extent of incapacitation alleged. These specific and non-arbitrary findings support the ALJ's credibility determination.

Contrary to the majority's view, substantial evidence supported the ALJ's finding that Dr. Kim's opinion was primarily based on these properly discredited subjective complaints. As the majority opinion observes, Dr. Kim conducted both radiological examinations and objective physical tests of Vieyra. Dr. Kim's x-ray examination, however, revealed "normal" spinal conditions, and Dr. Kim's physical examinations revealed "normal" forward flexion, extension, lateral bending, and rotation capabilities. It is difficult to see how these findings could have substantially influenced Dr. Kim's opinion that Vieyra was disabled. Rather, Dr. Kim's opinion appears to have been based in large part on Vieyra's own subjective complaints. The ALJ's determination that Dr. Kim's opinion was premised on Vieyra's subjective complaints was therefore supported by substantial evidence.

As the majority recognizes, "it is within the ALJ's province to reject a treating physician's opinion" if the ALJ gives specific and legitimate reasons for doing so. For the reasons discussed above, I believe that the ALJ met this burden, and would affirm the judgment of the district court.